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Federal Communications Commission

DA 93-1222

Before the
Federal Communications Commission
Washington, D.C. 20554

Nov 2 2 13 PM '93

DISPATCHED BY MM Docket No. 93-28

In the Matter of

Amendment of Section 73.202(b), RM-8172
Table of Allotments, RM-8299
FM Broadcast Stations.
(Colonial Heights, Tennessee)

ORDER TO SHOW CAUSE

Adopted: October 18, 1993; Released: November 2, 1993

Comment Date: December 27, 1993

By the Assistant Chief, Allocations Branch:

1. The Commission issued the *Notice of Propose Rule Making* in this proceeding, 8 FCC Rcd 1794 (1993), in response to a petition filed by Murray Communications ("petitioner"), permittee of Channel 290A, Colonial Heights, Tennessee, proposing the substitution of Channel 290C3 for Channel 290A at Colonial Heights and modification of petitioner's authorization accordingly. Petitioner filed comments, as well as a counterproposal.

2. Petitioner's counterproposal requests the substitution of Channel 240C2 or, alternatively, Channel 240C3 for Channel 290A at Colonial Heights, Tennessee, and modification of its construction permit to specify the higher powered channel.² In order to accommodate this proposal, petitioner also requests the substitution of Channel 290A for Channel 231A at Tazewell, Tennessee, Channel 231A for Channel 240A at Morristown, Tennessee, Channel 252A for Channel 290A at Whitley City, Kentucky, and a change of site for Station WAEY-FM, Princeton, West Virginia.³ Petitioner acknowledges its responsibility to compensate the licensees of Stations WCTU-FM and Station WMXX-FM for the reasonable expenses they would incur in changing channels and the licensee of Station WAEY-FM for the reasonable expenses it would incur in changing its transmitter site.

3. The Commission has made a preliminary determination that the public interest would be advanced by proposing the above-noted channel changes to accommodate petitioner's upgrade proposal at Colonial Heights. A final determination regarding this amendment to the Table must await the outcome of the Show Cause Orders concerning the license modification of Station WCTU-FM, Tazewell,

Tennessee, and Station WMXX-FM, Morristown, Tennessee, as discussed herein. Although the licensees of Stations WCTU-FM and Station WMXX-FM are provided an opportunity to object to the ordered channel changes, this Order does not afford additional opportunity either to comment on the merits of the conflicting proposals or for the acceptance of additional counterproposals.

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, WFSM, Inc., and Franklin Communications, Inc., respective licensees of Station WCTU-FM, Tazewell, Tennessee, and Station WMXX-FM, Morristown, Tennessee, SHALL SHOW CAUSE why their licenses SHOULD NOT BE MODIFIED to specify operation on Channel 290A and 231A as proposed herein instead of the present Channel 231A and Channel 240A, respectively.

5. Pursuant to Section 1.87 of the Commission's Rules, WFSM, Inc. and Franklin Communications, Inc. may, not later than **December 27, 1993**, file a written statement showing with particularity why their licenses should not be modified as proposed in the *Order to Show Cause*. The Commission may call on WFSM, Inc. and Franklin Communications to furnish additional information. If WFSM, Inc. or Franklin Communications, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, WFSM, Inc. and Franklin Communications Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order to Show Cause* to

WFSM, Inc.
P.O. Box 1409
LaFollette, Tennessee 37766
(Licensee of Station WCTU-FM)

Franklin Communications, Inc.
510 West Economy Road
Morristown, Tennessee 37814
(Licensee of Station WMXX-FM)

¹ Public Notice of the counterproposal was given July 29, 1993, (corrected August 3, 1993) Report No. 1955.

² The coordinates for Channel 240C2 at Colonial Heights are North Latitude 36-35-35 and West Longitude 82-37-16. The coordinates for Channel 240C3 at Colonial Heights are North Latitude 36-31-36 and West Longitude 82-35-14.

³ The three substitutions required for Channel 240C2 are also

required for Channel 240C3. In this regard, we note that Station WHAY-FM has consented in advance to the channel change at Whitley City, Kentucky, and Station WAEY-FM also agreed to relocate its transmitter site to the extent necessary to clear the proposed substitution of Channel 240C2 for Channel 290A at Colonial Heights.

7. A copy of any comments filed by WFSM, Inc. or Franklin Communications, Inc. in this proceeding should be served on the following party:

Timothy K. Brady, Esq.
P.O. Box 986
Brentwood, Tennessee 37027-0986
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau